

January 17, 2006

**DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY**

Appeal

Name of Petitioner: Northeast Ohio American Friends Service Committee

Date of Filing: October 12, 2005

Case Number: TFA-0123

On October 12, 2005, the Northeast Ohio American Friends Service Committee (NOAFSC) filed an Appeal from a determination issued to it by the Office of the Inspector General of the Department of Energy (OIG) on September 8, 2005, in response to a request for documents that NOAFSC submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require that OIG perform an additional search for responsive material.

I. Background

On January 12, 2005, NOAFSC submitted a FOIA request for documents maintained by OIG that relate to radiation and the Industrial Excess Landfill and /or the Kittinger Landfill in Uniontown, Ohio. NOAFSC also asked for “documents concerning a meeting with Jessie Robison, Margaret Lapham, and Mr. Walter during the summer of 2004.” Letter from NOAFSC to DOE/HQ (January 12, 2005) (Request). NOAFSC added that it did not want to receive any documents that DOE had either received from or sent to the Concerned Citizens of Lake Township (CCLT). *Id.* OIG searched its files and found 46 responsive documents. OIG released seven documents with material withheld pursuant to Exemptions 6 and 7(c). Thirty-eight responsive documents related to CCLT, and those documents were withheld pursuant to NOAFSC’s request. OIG also had one responsive document in its possession that originated at the Environmental Protection Agency (EPA), and OIG forwarded the document to the EPA for a determination concerning its release. *See* Determination Letter at 1. The determination letter explained that one document was created at the EPA and that the EPA “will respond directly to [AFSC] regarding the releasability of the document.” Determination Letter at 2.

NOAFSC raised two issues in its appeal. First, NOAFSC contends that DOE did not respond to its original request because no documents were released concerning the summer 2004 meeting. Second, NOAFSC contends that DOE’s search was inadequate because no other DOE divisions had replied to NOAFSC concerning its request. In the Appeal, NOAFSC asks OHA to direct OIG to search again for responsive information. *Id.*

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). “The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Glen Milner*, 17 DOE ¶ 80,102 (1988).

We contacted OIG for information about the search. OIG responded to both of NOAFSC’s arguments on appeal. First, OIG stated that there was no documentation of the summer 2004 meeting mentioned in the original request. OIG verified the absence of documentation with DOE employees who had attended the meeting. *See* Memorandum of Telephone Conversation between Ruby Len, OIG, and Valerie Vance Adeyeye, OHA (December 14, 2005). As for the second argument, OIG informed us that the original request was also referred to the Office of Environmental Management (EM), and that EM had indeed responded that the facility involved was not under EM’s control. *Id.* EM referred the request to the EPA. *Id.* OIG sent us a copy of an electronic mail message from EM-1 dated April 23, 2004 stating that the facility in the request was not included in EM’s program function. OIG released a copy of this email to NOAFSC as Document 4.

After reviewing the record of this case, we find that OIG conducted a search that was reasonably calculated to uncover the requested information. Further, the requester did receive notification from another DOE division (EM) that the landfills in question were not within its jurisdiction. Based on the information in the record and our communications with OIG, we are convinced that no offices other than OIG and EM are likely to have documents responsive to this request. Accordingly, this Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Freedom of Information Act Appeal filed by Northeast Ohio American Friends Service Committee on October 12, 2005, OHA Case Number TFA-0123, is hereby denied.
- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in

which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: January 17, 2006